

Editor's note: Reconsideration denied by Order dated Jan. 3, 1992

PATSY A. BRINGS

IBLA 89-533

Decided June 18, 1991

Appeal from a decision of the Arizona State Office, Bureau of Land Management, declaring placer mining claim A MC 86958 null and void ab initio and rejecting mineral patent application A 23168.

Affirmed.

1. Mining Claims: Location--Mining Claims: Patent--Mining Claims: Placer Claims--Mining Claims: Relocation--Mining Claims: Withdrawn Land

An amended mining claim location is a location made in furtherance of an earlier valid location and relates back to the date of the original location as long as no adverse rights have intervened. The burden is on the claimant to establish that a mining claim location on land segregated from mineral entry, made after the segregation, is actually an amendment of a prior location made while the land was open to mineral location. To satisfy the burden, the claimant must show that the original location was properly made, that the amended location embraces lands included in original location, and that the claimant has an unbroken chain of title to the original locator. Such an amendment, however, preserves only that part of the original described land that is common to the original location and the amendment.

2. Mining Claims: Location--Mining Claims: Patent--Mining Claims: Placer Claims--Mining Claims: Withdrawn Lands

A mining claimant who asserts that a notice of location misstates the beginning point of a claim has the burden of proving that the claim was properly located on the ground in the position asserted.

3. Mining Claims: Location--Mining Claims: Withdrawn
Land--Segregation

A mining claim located at a time when the land is segregated from appropriation under the mining law by a small tract classification is properly declared null and void ab initio.

APPEARANCES: Patsy A. Brings, pro se; Richard R. Greenfield, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Phoenix, Arizona, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Patsy A. Brings has appealed from a June 8, 1989, decision of the Chief, Branch of Mining Law Administration, Arizona State Office, Bureau of Land Management (BLM), declaring the Turkey Track #1 placer mining claim (A MC 86958), situated in the SW¼ sec. 22, T. 4 N., R. 3 E., Gila and Salt River Meridian, Maricopa County, Arizona, null and void ab initio and rejecting her mineral patent application (A 23168) for that claim.

The Turkey Track #1 placer mining claim was originally located on September 1, 1954, by Rachelle Lora Landriault. 1/ The notice of location, which was recorded on October 7, 1954, described the claim as

[b]eginning at Monument 1800 ft N from 1/2 Sec. U.S. Survey Marker in Sec. South sec. line Between Sec. 22 & 27 running East to West in T. 4 N., R. 3 E., at a monument (post, stone or other monument) where this notice is posted; thence 300 feet to a Post, thence 1500 feet to a Post, thence 340 feet to a Post, thence 612 & 900 & 300 feet to the place of beginning, containing 19 acres, all in Winifred Mining District, in the County of Maricopa, in the state of Arizona, about 1/2 mile in a West direction from Cave Creek Road.

Landriault transferred the Turkey Track #1 placer claim to Hiram B. Webb by quitclaim deed on February 29, 1956. 2/

1/ The notice of location is signed "Rachelle Lora Landriault By J. D. Landriault." The record indicates that J. D. Landriault was the father of Rachelle Lora Landriault.

2/ By complaint dated Sept. 24, 1956, and served on Oct. 1, 1956, on Rachelle Lora Landriault only, BLM initiated Contest No. 10009 against the Turkey Track #1 placer claim. On Nov. 1, 1956, BLM issued a decision declaring the Turkey Track #1 placer claim null and void because Landriault had failed to respond to the complaint within 30 days, as required. By decision dated Aug. 5, 1987, this Board found that BLM's failure to serve Webb with a copy of the complaint in Contest No. 10009 was fatally defective to that contest, and that the default judgment was not binding on Webb or his successors-in-interest, including Brings. Patsy A. Brings, 98 IBLA 385, 390 (1987).

On August 13, 1956, BLM issued Small Tract Classification Order No. 52, which classified the W½ sec. 22, T. 4 N., R. 3 E., Gila and Salt River Meridian (exclusive of patented mining claims), as well as other lands, as suitable for lease and sale for residence purposes under the Small Tract Act of June 1, 1938, as amended, 43 U.S.C. § 682a (1976) (repealed by section 702 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2789 (1976)). The order stated that the classification of the described lands "segregates them from all appropriations, including locations under the mining laws." 3/

In an "amended" notice of location, dated January 30, 1957, Webb described the Turkey Track #1 placer mining claim as

[b]eginning at the quarter corner U.S. Mineral Survey Marker located at the center of the boundary line between Sections 22 and 27 in Township Four (4) North, Range Three (3) East, Gila & Salt River Base & Meridian, in Maricopa County, Arizona, thence North 900 feet to a post whereat a copy of this Amended Notice is located, said post being the Southeast corner of this claim, thence North 660 feet to a post, being the Northeast corner of this claim, thence West 1320 feet to a post being the Northwest corner of this claim, thence South 372 feet more or less to a post, thence South approximately 45 [degrees] East, 412 feet, more or less, along the side line of the Santa Rosa patented mining claim Survey #3740 to a post, thence East 1042 feet more or less to the point of beginning, containing approximately 19 acres. This is an Amended Notice of Location of a placer claim here located on 1 September 1954.

This "amended" notice of location was recorded on January 31, 1957. 4/ In an additional "amended" notice of location for the Turkey Track #1 placer mining claim, dated February 14, 1961, and recorded on March 9, 1961, Webb

3/ On Sept. 17, 1958, Small Tract Classification Order No. 52 was revoked in part to the extent it covered the NW¼ and the W½ SW¼ sec. 22. The order was cancelled on June 14, 1965. The land was again segregated from mineral entry on Apr. 26, 1973, when the City of Phoenix filed Recreation and Public Purposes Act application A 6390.

4/ The record contains a copy of a location notice for the Turkey Track #1 lode mining claim, signed by Webb and dated Jan. 30, 1957. Despite the date on that location notice, the Turkey Track #1 lode claim was located, posted, and monumented prior to that date. See discussion of Contest No. 10013, infra. The southeast corner of the Turkey Track #1 lode claim coincided with the southeast corner of the "amended" Turkey Track #1 placer claim. The Turkey Track #1 lode claim was declared null and void by Hearing Examiner Rudolph M. Steiner in his decision in United States v. Webb, Contest No. 10013, dated Dec. 23, 1957.

further refined the description in the January 30, 1957, "amended" location notice. 5/

Webb sold the Turkey Track #1 placer claim to Brings on November 16, 1978. 6/ The claim was recorded with BLM pursuant to section 314 of FLPMA, 43 U.S.C. § 1744 (1988), on October 22, 1979, and on January 20, 1988, Brings applied for patent of the Turkey Track #1 placer claim. In the application she stated that granite had been mined from the claim since it was first located in 1954. While recognizing that granite was a common variety mineral, she indicated that the Turkey Track #1 placer claim had been located prior to the enactment of the Act of July 23, 1955, 30 U.S.C. § 611 (1988), which prohibited the location of common varieties of minerals.

In its June 8, 1989, decision, BLM found that the land described in the 1957 "amended" location notice was not the same ground identified in the original Turkey Track #1 placer location notice. It explained that the original September 1, 1954, placer location notice described the claim as beginning at a point 1,800 feet north of the quarter section corner between secs. 22 and 27, while based on the January 30, 1957, "amended" notice of location, the claim commenced at a post 900 feet north of that same corner.

BLM stated that in adjudicating Brings' patent application, it had reviewed the location notices submitted with the application and, additionally, the former contests of the Turkey Track #1 placer claim (Contest No. 10009) and the Turkey Track #1 lode claim (Contest No. 10013), both of which had been initiated in 1956. It indicated that Contest No. 10009 was based on a March 2, 1956, mineral report by Donald F. Reed, a BLM mining engineer, which stated that the description of the Turkey Track #1 placer mining claim notice of location "is so garbled as to be impossible to trace." 7/

BLM also discussed Contest No. 10013 in which it had challenged the validity of eight lode claims, located by J. D. Landriault in the name of Rachelle Lora Landriault, in sec. 22, including the Turkey Track #1 lode mining claim. It noted that during the March and April 1956 examination of the lode claims, Reed had found the Turkey Track #1 lode claim posted on the ground at 900 feet north of the quarter section corner monument of secs. 22 and 27, but had found no record of the lode claim in the Maricopa County recorder's office. In contrast, it explained that Reed had discovered the recordation of the Turkey Track #1 placer claim, but could not

5/ Mineral Survey No. 4574 was conducted on the Turkey Tract #1 placer mining claim between Aug. 8, and Sept. 1, 1961, based on the description in the Feb. 14, 1961, amended location notice.

6/ See Hiram Webb, 105 IBLA 290, 292 n.2, 95 I.D. 242, 244 n.2 (1988), for a more detailed description of the transaction and subsequent events.

7/ The report was actually dated Sept. 12, 1956. See Patsy A. Brings, *supra* at 386.

find the placer claim on the ground. See Patsy A. Brings, 98 IBLA 385, 386-87 (1987).

BLM found that

at the time of Reed's mineral examination in 1956 the original Turkey Track [#]1 placer mining claim was not physically monumented, posted or found upon the ground 1800 feet north of the south quarter corner of sections 22 and 27 as described by the location notice found in the county records dated September 1, 1954. The claim was also not physically monumented, posted or found on the ground 900 feet north of the south quarter section corner of sections 22 and 27, where the Turkey Track [#]1 Lode claim was physically monumented and posted.

(June 8, 1989, Decision at unnumbered page 5).

BLM concluded that

January 30, 1957 is the effective date of location of the claim for which patent application has been filed. * * * The land was segregated on August 13, 1956 under Small Tract Classification Order No. 52. Therefore, the government action preceded Mr. Webb's entry in 1957, prohibiting him from curing any defects such as boundary descriptions different to those in the original location notice and/or from changing the size of the claim.

(June 8, 1989, Decision at unnumbered pages 5-6).

Therefore, BLM determined that the Turkey Track #1 placer mining claim was invalid, declared it null and void ab initio, and rejected Brings' patent application with prejudice.

On appeal, Brings argues that the January 30, 1957, "amended" location notice was proper because it was filed to correct errors in the original Turkey Track #1 placer location notice. She first alleges that "examination of the original location notice indicates 1,800 feet distance from the 1/4 section corner of secs. 22 & 27 may have been written over to show 1,200 feet from the corner. Depending on the type of ink used, one figure may show up better in the reproduction process" (Statement of Reasons (SOR) at 1).

Brings next contends that the "amended" location notice describes the same ground intended to be claimed by the original placer location notice. She argues that the description of one boundary of the claim as being 612 feet long can only pertain to the common boundary with two patented mining claims, and only if the southeast corner of the claim is

situated 900 feet north of the quarter section corner of secs. 22 and 27 will that length of a boundary line apply.

Brings challenges several aspects of Reed's conclusions concerning the location of the Turkey Track #1 placer claim, alleging that he failed to survey or pace off the distances, and that he, therefore, could not have properly testified to the location of the monuments or known where to look for the location notice. She further asserts that William Crawford, a registered mining engineer, testified in Contest No. 10013 8/ that he found

the Turkey Track #1 claim situated 900 feet north of the quarter section corner of secs. 22 and 27 and monumented both as a lode and a placer claim.

In its answer, BLM argues that both the evidence and the law fully support its determination that the Turkey Track #1 placer claim was located after the date of the "Common Varieties" Act, i.e., the Act of July 23, 1955, 30 U.S.C. § 611 (1988), and after the segregation of the subject lands from mineral entry.

BLM argues that no factual basis supports Brings' suggestion that the original location notice may have been written over. It notes that the copies of the notice in the record are certified copies which clearly show that the claim begins 1800 feet north of the quarter section corner between secs. 22 and 27. BLM discounts Brings' attempt to extrapolate a new distance from the inclusion of the 612-foot boundary in the 1954 location notice, arguing that there is no basis in that notice for inferring that it was intended that the Turkey Track #1 placer claim abut patented land, since the notice contains no reference to such land.

BLM reviews relevant testimony from Contest No. 10013 and argues that Reed would not have missed a properly located, monumented, and posted Turkey Track #1 placer claim on the ground, if it had existed. It contends that Brings' reliance on Crawford's testimony that he found both placer and lode monuments 900 feet north of the quarter section corner as support for her position is misplaced, asserting that his testimony regarding the placer location necessarily relates to the claim as relocated by Webb in 1957.

Our resolution of this appeal focuses on whether Webb's January 30, 1957, "amended" location notice of the Turkey Track #1 placer was, in fact, an amended notice of location which related back to the original September 1, 1954, location, or a relocation of that placer claim or a new location. Brings does not dispute that the Act of July 23, 1955, 30 U.S.C. § 611 (1988), precluded the location of mining claims for common variety minerals, including granite, after that date, or that Small Tract Classification Order No. 52 segregated the land in question from mineral entry effective August 13, 1956. See, e.g., Thom Seal, 92 IBLA 9, 10-11 (1986); J. S. Bowers, 79 IBLA 298, 299-300 (1984). She contends, however,

8/ Brings erroneously states that Crawford provided such testimony in "Contest 1009."

that neither the Act nor the classification order affects the Turkey Track #1 placer claim because that claim was properly located on September 1, 1954, prior to the effective date of the Act and classification order, and that the 1957 "amended" location notice merely corrected an error in the original location notice. BLM asserts that the 1957 location moves the claim to new ground not covered by the original location and, thus, constitutes a relocation or a new location which does not relate back to the original location notice and is null and void because of the Act and the classification order.

We agree with BLM that the 1957 "amended" location does not relate back to the 1954 placer location and that the Turkey Track #1 placer mining claim is null and void ab initio.

[1] An amended location is a location made in furtherance of an earlier valid location and relates back to the date of the original location as long as no adverse rights have intervened. R. Gail Tibbetts, 43 IBLA 210, 216-17, 86 I.D. 538, 541-42 (1979), overruled in part on other grounds, Hugh B. Fate, Jr., 86 IBLA 215 (1985); see also United States v. Johnson, 100 IBLA 322, 337 (1987). A relocation, by contrast, is adverse to an original location, and does not relate back to the date of the original location. United States v. Johnson, supra; American Resources, Ltd., 44 IBLA 220, 223 (1979). A location notice cannot be considered an amended location, so as to relate back to a location which predates a segregation of lands from mineral location, to the extent such location notice describes new land not included in the original location. Such a location notice must be considered a new location or a relocation as to those added lands, not an amended location, and the locator's rights as to the added lands date from the date of the amended location. See United States v. Johnson, supra; Fairfield Mining Co., 66 IBLA 115, 118 (1982).

The burden is on the claimant to establish that a mining claim location on land segregated from mineral entry, made after the segregation, is actually an amendment of a prior location made while the land was open to mineral location. Russell Hoffman (On Reconsideration), 87 IBLA 146, 148 (1985). Such an amendment, however, preserves only that part of the original described land that is common to the original location and the amendment. Thus, to satisfy the burden in this case, Brings must show that the 1954 location was properly made, that the 1957 location embraces lands included in the 1954 location, and that she has an unbroken chain of title to the original locator. See Jack T. Kelly, 113 IBLA 280, 283 (1990); Russell Hoffman (On Reconsideration), supra; Grace P. Crocker, supra at 80. ^{9/}

A locator is not required to submit a precise description of the position of the claim; the description is sufficient if the claim may be found

^{9/} The record clearly shows that Webb acquired title to the Turkey Track #1 placer claim directly from Landriault who originally located the claim; thus the unbroken chain of title is not an issue here.

and identified by following the recorded description. United States Borax & Chemical Corp., 98 IBLA 358, 360 (1987); Outline Oil Corp., 95 IBLA 255, 259 (1987); Joe Ostrenger, 94 IBLA 229, 232 (1986); Arley Taylor, 90 IBLA 313, 316 (1986). "The purpose of requiring that the recorded description refer to a natural object or permanent monument is to give a starting point from which, by following the description, the markings of the claim on the ground may be found." Arley Taylor, *supra*; see also 2 American Law of Mining, § 33.09[3] (2d ed. 1984).

Brings acknowledges that the Turkey Track #1 placer claim was never found on the ground beginning at a point 1,800 feet north of the quarter section corner between secs. 22 and 27, as stated in the September 1, 1954, notice of placer location. 10/ She asserts that the claim has always been physically situated on the ground with the southeast corner of the claim at a point 900 feet north of the quarter section corner, and that the original location notice mistakenly stated that it began 1,800 feet north of the corner. 11/

10/ Although, by order dated Mar. 1, 1991, we requested that Brings provide any additional information she had in support of her assertion that the 1954 location notice may actually state that the claim begins at a point 1,200 feet north of the quarter section corner, she supplied no such information. The copy of the location notice submitted with her patent application has been certified by the county recorder as a "full, true and correct copy of the original record." This copy clearly shows 1,800, not 1,200, feet, although it is evident that the "1,800" was written over a different number, but not necessarily 1,200. If Brings believed that the certified copy was not accurate, it was incumbent upon her conclusively to demonstrate the error, not simply to speculate that another number may have been intended. This she failed to do, and we accept "1,800" as the correct number.

11/ This argument ignores the fact that even if the 1954 location and the 1957 "amendment" commenced at the same point, *i.e.*, 900 feet from the quarter corner of sec. 22 and 27, the descriptions in the two location notices do not delineate the same area. In fact, since the original location notice contains no directions for its calls, it is impossible to determine with certainty the area described in that notice. A comparison of the calls for each follows:

| <u>Original Location</u> | | <u>1957 "Amendment"</u> | |
|--------------------------|--------------------------------|-------------------------|------------|
| 1st call | 300 feet (no direction) | North | 660 feet |
| 2nd call | 1,500 feet (no direction) | West | 1,320 feet |
| 3rd call | 340 feet (no direction) | South | 372 feet |
| 4th call | 612 & 900 & 300 (to beginning) | Southeast | 412 feet |
| 5th call | | East | 1,042 feet |

[2] As a general rule, if the recorded description of a mining claim differs from its actual situs on the ground, the physical markings on the ground control, so long as they have been maintained. R. Gail Tibbetts v. BLM, 62 IBLA 124, 131 (1982); United States v. Kincanon, 13 IBLA 165, 168 (1973). See also Kenneth Russell, 109 IBLA 180, 183 n.6 (1989). The claimant has the burden of showing that the claim was positioned as asserted. The Atchison Topeka & Santa Fe Railway Co. v. Cox, 4 IBLA 279, 282 (1972). Thus, the question is whether the Turkey Track #1 placer claim was properly located on the ground in September 1954 at the same location as that described in the 1957 "amended" location.

The only evidence in the case file as submitted to the Board concerning the situs on the ground of the Turkey Track #1 placer claim prior to January 1957 came from testimony in Contest No. 10013. Although Reed stated that he did not find a placer claim situated 900 feet north of the quarter section corner of secs. 22 and 27 when he examined that area in March and April 1956 (although he did find a lode claim posted and monumented there), Crawford, who testified as a witness for Webb at the May 1957 hearing, indicated that he had found the ground monumented as both a lode and a placer claim. Crawford admitted, however, that he found no location notices posted on the site. See Patsy A. Brings, *supra* at 387, citing transcript of hearing in Contest No. 10013 at 212-13. 12/

Due to the limited nature of the evidence, the Board, by order dated March 1, 1991, afforded Brings an opportunity to provide additional evidence to substantiate her assertion that the Turkey Track #1 placer claim was physically situated, monumented, and posted on the ground 13/ 900 feet north of the quarter section corner between secs. 22 and 27 before the Act of July 23, 1955, 30 U.S.C. § 611 (1988), precluded the location of mining claims for common variety minerals, including granite, and the August 13, 1956, Small Tract Classification Order No. 52 segregated the land from mineral entry. 14/

12/ Since the original dimensions on the 1954 placer location notice for the Turkey Track #1 claim approximated those of a lode claim, it is likely that the placer monumentation discovered by Crawford related to the January 1957 "amended" location.

13/ For a mining claim to be properly located, the locator must comply with both Federal and state location requirements. Scott Burnham, 100 IBLA 94, 126-28, 94 I.D. 429, 446-47 (1987); United States v. Haskins, 59 IBLA 1, 49-50, 88 I.D. 925, 950 (1981), *aff'd* Haskins v. Clark, No. CV-82-2112-CBM (C.D. Cal. Oct. 30, 1984). In 1954, the regulations found at 43 CFR 185.3 provided that "[a] location is made by staking the corners of the claim, posting notice of location thereon and complying with the State laws." (Footnote omitted.)

14/ The order also provided her with an opportunity to provide evidence in support of her contention that the 1954 location notice describes the claim as beginning 1,200 feet north of the quarter section corner. She provided no such evidence. See note 11, *supra*.

In her response, Brings attacked Reed's credibility and professionalism, but did not provide the requested supplementary information regarding the physical situs of the Turkey Track #1 placer claim at the relevant

time. She did, however, attach two letters from Harvey W. Smith, a registered mineral surveyor who performed the 1961 mineral survey of the "amended" placer claim location. In these letters Smith indicated that it was not uncommon for locators to err in tying their claims to a section or quarter section corner, even though they knew exactly what land they were claiming. He praised Albert MacKenzie, the attorney who drafted the "amended" location notice (and who represented Webb in Contest No. 10013), stating that "I find it difficult to believe that [MacKenzie] would permit the location of a mining claim to be moved from one area to another. In view of that, I believe that the location of the Turkey Track #1 placer has always been in the same place" (Mar. 11, 1991, Letter at 1).

Smith also disputed Reed's conclusion that the original location was garbled, suggesting that although adjacent patented claims were not mentioned in the 1954 location notice, that notice referred to them because it contained a 612-foot line which could not be explained, except as a reference to those claims. Smith admitted that he could not account for the 1,800-foot beginning distance, but speculated that locators often had difficulty specifically relating the ground they wanted to a monument. Smith also suggested that the monuments Reed found on the ground designating the lode claim were actually the monuments for the placer claim.

BLM filed a reply asserting that Brings' attack on Reed's credibility did not produce any evidence responsive to our order. It offered additional excerpts from the transcript of the hearing in Contest No. 10013 to bolster Reed's credibility, to highlight the care he took in examining Webb's various claims, 15/ and to support Reed's conclusions concerning the location of the Turkey Track #1 placer claim. 16/

15/ As noted supra in Contest No. 10013, BLM challenged eight lode claims located by J. D. Landriault in the name of his daughter, Rachelle Lora Landriault, all of which had been transferred to Webb. Regarding his examination of those eight claims, Reed testified:

"Well, I first identified each claim as closely as was possible. I may say that some of the claims, the location notices were so badly written, the description was so obviously incorrect, that it was impossible to use the description to identify the claim. But I did find the corners on the ground and found the location notices on each claim, and paced around them to determine as nearly as possible their exact boundaries." Exh. B attached to BLM's Reply, Transcript of Hearing in Contest No. 10013 at 12. Thus, Reed was able to locate each one of the eight lode claims on the ground.

16/ Reed testified as follows in the 1957 hearing:

"Turkey Track [#]1 lode claim was not on record at the county recorder's office. The date of location given on the location notice found on the claim was the 1st of September 1954. I may say I found recorded Turkey Track [#]1 Placer Claim on record in the county recorder's office, but I

BLM also challenged various aspects of Smith's letters. It cited the Contest No. 10013 hearing transcript at page 26 as demonstrating that MacKenzie either "amended" the Turkey Track #1 placer claim to take in new ground or "amended" the Turkey Track #1 lode claim to a placer claim. ^{17/} It noted that Smith, who was impressed by Landriault's ability to make precise measurements of the length of a side line of a patented claim, was nevertheless unable to explain how Landriault could have made such a gross error in measurement from the survey monument, and emphasized that the difference of 900 feet between the original location notice and the "amended" notice was not a minor error. Finally, BLM discounted Smith's suggestion that the lode monuments found by Reed were actually the monuments for the placer claim by pointing out that Reed knew they were lode monuments because he found the lode location notice posted on the claim and the description thereon fit the claim on the ground.

We find that, despite the additional opportunity afforded Brings to substantiate her contentions concerning the location of the Turkey Track #1 placer claim, she has failed to meet her burden of proving that the Turkey Track #1 placer claim was physically situated and properly monumented and

fn. 16 (continued)

did not find any such location on the ground, and Mr. Landriault informed me he had no placer locations." (Exh. B attached to BLM's Reply, Transcript of Hearing in Contest No. 10013 at 11). In addition, Reed provided the following responses to questions from MacKenzie:

"Q. What you examined was the claim known as Turkey Track [#]1, which had a notice of location as a lode claim on the ground but which, as you previously indicated, showed or was recorded as a placer claim, isn't that so?

"A. I don't know whether the claim recorded as a placer claim was the same claim as Turkey Track [#]1 lode claim I found on the ground.

"Q. You don't know and you didn't make an effort to find out?

"A. The description did not fit at all.

"Q. Didn't fit what?

"A. Didn't fit the claim as staked on the ground.

"Q. Which description didn't fit the claim as located?

"A. The placer claim.

"Q. You checked that out?

"A. Yes.

"Q. Did the lode claim fit the claim on the ground, the lode claim notice?

"A. Yes."

(Exh. B attached to BLM's Reply, Transcript of Hearing in Contest No. 10013 at 25-26).

^{17/} After Reed's testimony at pages 25 and 26 of the Transcript of Hearing in Contest No. 10013, quoted in note 16, supra, MacKenzie made the following statement at page 26:

"In any event, I think the record now should show that we hold the Turkey Track [#]1 as a placer claim and not as a lode claim. And just

posted on the ground 900 feet north of the quarter section corner between secs. 22 and 27 before the Act of July 23, 1955, 30 U.S.C. § 611 (1988), precluded the location of mining claims for common variety minerals, including granite, and the August 13, 1956, Small Tract Classification Order No. 52 segregated the land from mineral entry. The record, as originally forwarded to the Board, did not support her assertion that the 1957 "amended" location covered the same ground as the original 1954 location, and she has presented no additional evidence to validate that assertion. Smith's letters contain no relevant factual information, and his opinions do not withstand scrutiny in light of BLM's references to sworn testimony undercutting their foundations.

[3] We find, therefore, that the date of location of the Turkey Track #1 placer mining claim was January 30, 1957, the date of Webb's "amended" notice of location. Thus, the claim was located at a time when the land was segregated from appropriation under the mining laws by the small tract classification. It is well established that mining claims located on Federal land not open to location under the general mining law on the date of location are null and void ab initio. See, e.g., Harold E. Re Doux, 94 IBLA 350, 351, and cases cited therein. Since the claim was located on land segregated from appropriation under the mining law, BLM properly declared the claim to be null and void ab initio and rejected the patent application. 18/

fn. 17 (continued)

to make the record clear, the public records reflect that we filed an amended placer on that, and I was going to offer it when we put on our case."

18/ We note that in her SOR Brings makes reference to 30 U.S.C. § 38 (1988). The purpose of that section was "to obviate the necessity of proving formal location and recording." United States v. Haskins, supra at 52, 88 I.D. at 951. An assertion of section 38 in this case would be inconsistent with Brings' stated position that the Turkey Track #1 placer claim had been properly located and monumented on the ground prior to passage of the Common Varieties Act and the segregation of the land from location under the mining law. Moreover, if, in fact, Brings were asserting a section 38 claim, she would be required to show that the section 38 claim had been recorded pursuant to section 314 of FLPMA, 43 U.S.C. § 1744 (1988). See United States v. Haskins, supra at 105, 88 I.D. at 978. The claim recorded in 1979 was the Turkey Track #1 placer mining claim, which Brings asserts is a 1957 amendment of the 1954 location. The evidence in the record, however, regarding a 1954 location relates to a lode location on the ground. As the Board stated in Hiram Webb, supra at 303-04, 95 I.D. at 250, placer rights cannot inure to a lode location through the operation of 30 U.S.C. § 38 (1988). To the extent Brings has raised other arguments not specifically addressed herein, they have been considered and rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed. 19/

Bruce R. Harris
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge

19/ Although BLM assigned other grounds for declaring the Turkey Track #1 placer mining claim null and void ab initio, we do not rule on those grounds, except to note that such grounds, e.g., lack of discovery of a valuable mineral deposit, do not provide a basis for declaring the claim null and void ab initio. Rather such grounds properly form the basis for a challenge to the validity of the claim through the issuance of a contest complaint, providing the mining claimant with notice and opportunity for a hearing on the charges. See United States Steel Corp., 52 IBLA 319, 324 (1981).

